

PROBATE & ESTATE PLANNING SECTION

October 25, 2005

Corbin R. Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, Mich. 48909

Re: ADM File No. 2005-02

Proposed Administrative Order regarding Privacy Policy and Access to Court Records

Dear Mr. Davis:

Please be aware that the Probate and Estate Planning Section opposes the adoption of ADM File No. 2005-02 in its present form. As written, this directive could bring the operation of many probate courts to a virtual standstill. We would suggest that paragraph 4 of the Social Security Numbers and Nonpublic Records be deleted. Our Section would further ask that paragraph 2 of this section also not be adopted.

The public policy of attempting to prevent identity theft from judicial records is laudable. However, the current language of ADM 2005-02 would achieve this goal at an unacceptably high cost to the public and the probate bar. Requiring the redaction of records each time a file is accessed by an attorney or layperson would dramatically degrade the level of service probate court staff could provide.

Our representatives on the Probate Court Forms Committee have informed me that amendments approved to these forms will provide that only the last four digits of an individual's social security number be listed. This prospective action is reasonable and cost effective.

The Probate and Estate Planning Section would support adoption of ADM 2005-02 if paragraph 4 of the Social Security Numbers and Nonpublic Records are deleted. This provision, as written, would require redaction of social security numbers upon a request for copies of a public court document. If instead redaction were required only upon the request by the individual who possesses the social security number in question, the burden this would impose appears to be manageable by probate courts.

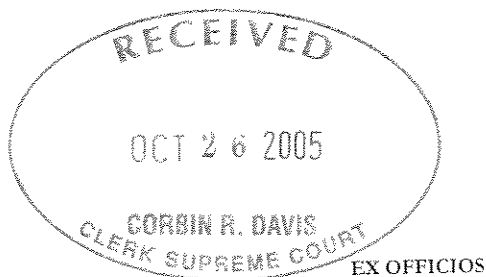
The Section also suggests that consideration be given to the imposition of a "redaction fee", which, as with other fees, could be waived upon a showing of indigency. Imposition of even a nominal amount (\$20, for example) would help offset the administrative burden that a "redaction upon request" policy would impose on probate courts.

The Probate and Estate Planning Section further requests that paragraph 2 of the Social Security Numbers and Nonpublic Records not be adopted. The current language is overbroad and could expose practitioners to severe penalties for the inadvertent filing of social security numbers with a court. For example, if financial records and other documents are provided as part of a discovery request and/or trial, the burden of reviewing these items and redacting any social security numbers would be considerable. Also, some official records, such as death certificates, contain social security numbers. Many probate courts require a death certificate be submitted as part of the filing to open a decedent estate. Would an attorney be expected to remove the social security number from this document?

If you have any questions concerning this matter please do not hesitate to contact me.

Sincerely,

Michael J. McClory
Chairperson



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